IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 199 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

VENUS ROAD BUILDERS

Appearance:

1. INCOME TAX REFERENCE No. 199 of 1989
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for the opinion of this Court in respect of the assessment year 1981-82 :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to Investment Allowance of Rs.37,457/- u/s. 32A of the Act ?"

2. Mr BB Naik, learned counsel for the revenue submits that since the assessee is a firm of contractors and is engaged in construction work, mainly related to constructing and preparing roads, the assessee cannot be said to be manufacturing or producing any article. Mr Naik has heavily relied on the decision of the Apex Court in CIT vs. N.C. Budharaja and Co., 204 ITR 412.

3. Having gone through the aforesaid decision, we find considerable substance in the submission of Mr Naik for the revenue. We find that the Tribunal erred in coming to the conclusion that the assessee is entitled to Investment Allowance of Rs.37,457/- under Section 32A of the Act. We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-